

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

**ROBERT PAZDZIERSKI,**

**Plaintiff,**

**-against-**

**DASEKE & CO., INC., ONX1, LLC AND  
BIG FREIGHTS SYSTEMS, INC.,**

**Defendant(s).**

**Case No. 5:21-cv-00966**

**THIRD-PARTY COMPLAINT  
AND JURY DEMAND**

---

**ONX1 LLC,**

**Third-Party Plaintiff,**

**-against-**

**CUSTOM ASSEMBLY, INC.,**

**Third-Party Defendant.**

Defendant/ Third-Party Plaintiff, ONX1, LLC (“Onx1”), represented by BRAFF, HARRIS, SUKONECK & MALOOF, as and for a Third-Party Complaint against Third-Party Defendant CUSTOM ASSEMBLY, INC., (“Custom Assembly”), states as follows:

**BACKGROUND FACTS**

1. Defendant/Third-Party Plaintiff Onx1 was served with a Complaint, a copy of which is attached hereto as Exhibit A.

2. The Third-Party Defendant, Custom Assembly, is a corporation organized and existing under the laws of the State of Ohio and authorized to do business in the State of New York.

3. At all times hereinafter mentioned, third-party plaintiff Onx1 was the owner and lessor of a property located at 6600 New Venture Gear Road, Syracuse, New York.

4. At all times hereinafter mentioned, third-party defendant Custom Assembly was a lessee of the premises located at 6600 New Venture Gear Road, Syracuse, New York and operated a business at that location.

5. The plaintiff, Robert Pazdzierski, alleged in the complaint attached hereto as Exhibit A that he was injured on January 21, 2019 while in the course of his employment with third-party defendant Custom Assembly at the aforesaid premises.

6. Plaintiff's complaint alleged, *inter alia*, that on or about January 21, 2019 plaintiff was struck by a falling object while in the course of his employment. Plaintiff's complaint alleged that defendant/third-party plaintiff, Onx1, was negligent and careless and failed to use reasonable and ordinary care under the circumstances. Plaintiff further alleged that defendant violated NYS Labor Law §§ 200, 240(1) and 241(6).

7. Defendant/third-party plaintiff Onx1 has denied the material allegations of plaintiff's complaint and set forth numerous affirmative defenses and cross-claims.

8. Third-Party Defendant, Custom Assembly entered into a lease with defendant/third-party plaintiff Onx1 on or about October 30, 2015. The lease was in force and effect at all times herein.

9. Pursuant to the express terms of said lease, third-party defendant Custom Assembly is required to indemnify and hold harmless the lessor, defendant/third-party plaintiff, Onx1, against

any and all claims, actions, damages or expenses in connection with all claims of personal injuries, and agreed to pay, hold harmless and to protect defendant/third-party plaintiff Onx1, and to pay all costs, expenses and attorney's fees in connection therewith.

10. Pursuant to the terms of the aforesaid lease, third-party defendant, Custom Assembly, was required to maintain insurance and to name defendant/third-party plaintiff, Onx1 as an additional insured. Pursuant to the terms of the aforesaid lease, the additional insured policies were required to be primary and not contributory and/or supplemental to defendant/third-party plaintiff's policies.

### **FIRST COUNT**

#### **Common Law Contribution and Indemnification**

1. That if plaintiff sustained damages in the manner and at the time and place alleged, and if it is found that the defendant/third-party plaintiff is liable to plaintiff herein, then defendant/third-party plaintiff is entitled to indemnification from and judgment over and against the aforementioned third-party defendant herein for all or a part of any verdict or judgment that plaintiff may recover against the defendant/third-party plaintiff, based on common law and/or statutory causes of contribution, indemnification between defendant/third-party plaintiff and the third-party defendant herein. That by reason of this action, the defendant/third-party plaintiff has been and will be put through costs and expenses, including attorney's fees.

WHEREFORE, defendant/third-party plaintiff demands judgment over and against the third-party defendant for common law indemnification and contribution, together with interest, costs of suit, and all other relief that this Court deems appropriate.

## **SECOND COUNT**

### **Contractual Indemnification and Breach of Contract**

1. Defendant/Third-Party Plaintiff repeats and reiterates the allegations contained in the previous counts as if set forth at length herein.

2. The third-party defendant is contractually obligated to hold harmless and to defend the defendant/third-party plaintiff Onx1 against all claims, actions, damages and expenses, including reasonable attorney's fees in connection with the defense of the instant matter and to indemnify defendant /third-party plaintiff, Onx1 in the event of any verdict or judgment.

3. The third-party defendant has breached its contractual obligations and refused to protect and defend defendant/third-party plaintiff Onx1 against plaintiff's claims, despite Onyx's demand that it do so. That by reason of the third-party defendant's breach of contract, the defendant/third-party plaintiff Onx1 has and will be put through costs and expense, including attorney's fees.

4. Third-party defendant, Custom Assembly, breached the contract/lease agreement with defendant third-party plaintiff Onx1, has failed to hold harmless and indemnify defendant/third-party plaintiff Onx1, to provide a defense against plaintiff's claims and/or to pay defense costs, including attorney's fees.

5. If plaintiff sustained damages in the manner and at the time and place alleged, and if it is found that the defendant/third-party plaintiff Onx1 is liable to plaintiff herein, that defendant/third-party plaintiff is entitled to be indemnified and held harmless against any such judgment or verdict and for the costs of defense, including attorney's fees.

WHEREFORE, defendant/third-party plaintiff demands judgment over and against the third-party defendant for contractual indemnification and against any verdict or judgement, and

for the costs of defense, including attorney's fees, together with interest, costs of suit, and all other relief that this Court deems appropriate

### **THIRD COUNT**

#### **Declaratory Judgment**

1. Pursuant to the lease agreement between defendant/third-party plaintiff Onx1 and the third-party defendant Custom Assembly, Custom Assembly was contractually obligated to procure and to provide insurance coverage that named defendant/third-party plaintiff as an additional insured on a primary, non-contributory basis and that provided for Onyx's defense.

2. The third-party defendant breached this agreement with defendant/third-party plaintiff Onx1 and failed to procure and to provide additional insured coverage on a primary, non-contributory basis.

3. That as an additional insured, defendant/third-party plaintiff Onx1 was entitled to a defense and to be insured and held harmless. That by reason of the third-party defendant's failure to procure and to provide the additional insured coverage the defendant/third-party plaintiff Onx1 has been and will be put to additional cost and expense, including attorney's fees.

4. That if plaintiff sustained damages in the manner and at the time and place alleged,, then the defendant/third-party plaintiff is entitled to indemnification and to be held harmless by the third-party defendant against any verdict or judgment as a result of its failure to obtain and to provide the required additional insured coverage and for the costs of defense, including attorney's fees..

WHEREFORE, defendant/third-party plaintiff demands judgment against the third-party defendant, in the amount of any verdict or judgement, together with interest and costs of suit, and for defense costs, including attorney's fees and such other relief as this Court deems proper.

**JURY DEMAND**

Defendant demands trial by jury on all counts.

Dated: New York, New York  
December 15, 2021

Yours, etc.



---

BRIAN C. HARRIS  
Attorneys for Defendant/Third-Party Plaintiff  
ONX1, LLC

BRAFF, HARRIS, SUKONECK & MALOOF  
570 W. Mt. Pleasant Ave.  
Suite 200  
Livingston, New Jersey 07039  
(212) 599-2085  
Our File No. 797.23094

**TO:** Robert A. Quattrocci, Esq.  
Stanley Law Offices, LLP  
Attorneys for Plaintiff  
ROBERT PAZDZIERSKI  
215 Burnet Ave.  
Syracuse, NY 13203

Vincent G. Saccomando, Esq.  
Barclay Damon, LLP  
Attorneys for Defendant  
BIG FREIGHT SYSTEMS INC.  
The Avant Building, Suite 1200  
200 Delaware Avenue  
Buffalo, NY 14202